

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION NO 1378 OF 1999

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MOHANLAL JAGDISHBHAI AGRAWAL

VERSUS

CHINUBHAI KESHVLAL PATEL

Appearance:

MR MB GANDHI for the Petitioner

MR RAMESH K. SHAH for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 30/12/1999

C A V JUDGMENT

#. This developing tendency amongst the litigants not to leave any order passed by the courts below against them

unchallenged is not proper and in the larger interest of themselves. The litigants are to keep in mind that the interlocutory orders, which are being made from time to time by the Trial Court during the pendency of the suit and if the courts are committed any illegality or irregularity in passing of the same these are subject to the correction by the appellate court. It is not the case where the litigants have no correctional remedial measures against the interlocutory orders but the defendants in the suit make all efforts to stall the proceedings of the suit by filing indiscriminately revision applications in this court. Even where on the face of it the orders passed by the courts below are just, fair and reasonable still the same are being taken up in Civil Revision Applications. Present is the clear case where the defendants who are occupying the premises in dispute have made an attempt by filing this Civil Revision Application to stall the proceedings of the civil suit.

#. Under the impugned order, the Judge of the Small Causes court No.12, Ahmedabad rejected the applications filed by the plaintiffs-respondents Ex.53 and that of the defendants-petitioners at Ex.56 and the application filed by the plaintiffs-respondents at Ex.61 has been granted. The necessary facts to decide this revision application briefly stated are as follows.

#. The plaintiffs landlord filed the suit against the three persons viz. the original tenant, since deceased and the defendants-petitioners impleaded as the sub-tenants in the suit premises. The suit is filed in the year 1989. In their application below 53 the plaintiffs-respondents prayed that after the death of the original tenant the present suit be permitted to be proceeded against the defendants-petitioners. To have the counter-blast to this application what it rightly stated by the courts below defendants-petitioners filed application below Exh.56 and prayed therein for dismissal of the suit on the ground that upon the death of the original tenant the suit abates as a whole and the suit against them be dismissed summarily. Then comes third application filed by the plaintiffs-respondents at Exh.61 in which the prayer has been made that the defendants-petitioners are tenants in arrears of rent for the period from 1/10/82 to 4/5/89 and the municipal tax is also due. The learned counsel for the defendants-petitioners relying on the decision of the apex court contended that the learned Trial Court has committed serious illegality in rejecting their application Exh.56 as well as in granting Exh.61 of the

plaintiffs-respondents. After the death of the original tenant the suit cannot proceed against the sub-tenants and the court below should have granted the application of the defendant at Exh.56 and the suit should have been dismissed. It has lastly been contended that the plaintiffs-respondents have accepted the defendants-petitioners to be their tenant only in the application Exh.61 for past arrears of rent and tax but these amounts are not recoverable from them.

#. Shri R.K.Shah learned counsel for the respondents has supported the order passed by the court below.

#. Having heard the learned counsel for the parties and going through the contents of the impugned order, I do not find any merits in this Revision Application.

#. The learned Trial Court is correct to hold that the matter sought to be raised by the parties vide their applications at Ex.53 and 56 is squarely covered under issue No.7(A) framed in the suit on the direction of this court. In the presence of the Issue No.7(A) in the suit I do not find any merits as what it is contended by the defendants-petitioners that the suit abates. If ultimately, the plaintiffs fail to establish their right to proceed against the defendants-petitioners Nos. 1 and 2 the suit will be dismissed but at this stage more so when issue No.7(A) is there in the suit this question cannot be permitted to be raised and decided. The learned Trial Court has rightly ordered for continuation of suit against defendants-petitioners. It does not mean nor it can be taken to be as if it is given its final decision. The court below only made an order to proceed in suit against the defendants-petitioners. Ultimately, on trial of the suit the plaintiffs-respondents may or may not succeed in the suit but the defendants cannot be allowed to stall proceedings by filing of this civil revision application. It is open to the defendants-petitioners to raise all the objections regarding maintainability of the suit against them after death of the original landlord but this cannot be decided by an interlocutory application more so when the suit is pending since 1989 and it can be decided finally within a short period. To the extent where the learned Trial Court said that the subject matter of the applications at Exh.53 and 56 covers under the issue No.7(A), it has not committed any illegality much less any material irregularity in exercise of its jurisdiction. It is also correct to state that the suit to proceed against the defendant Nos. 2 and 3.

#. The grant of the application at Ex.61 by the court below is also perfectly legal and justified. The plaintiffs by this application prayed for the amendment of the plaint and this has been granted. Whatever the amendment granted in the plaint is not final. It is open to the defendants to raise all the objections against this claim in the written statement to the amended plaint. The court below is correct in its approach to state that the grant of amendment in the plaint would not prejudice the defence of the defendants in any way. The defendants shall have the opportunity to take all defences open to them and ultimately the court may or may not grant the relief as prayed for by the plaintiffs-respondents in the plaint by amendment thereof vide application at Ex.61. Not only this if ultimately the defendants fail in the suit they have all the right to challenge this interlocutory order in the appeal which they proposes to file against final judgment and decree of the Trial Court.

#. Taking into consideration the totality of the facts of the case, not only this mater falls under any of clauses (a), (b) and (c) of the subsection (1) of the Section 115 of the Code of Civil Procedure but, in case the impugned order is allowed to stand, it will not occasion any failure of justice or will cause any injury to the defendants-petitioners.

In the result, this Civil Revision Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs. The learned Trial Court is directed to decide the suit finally within a period of 6 months from the date of the receipt of the writ of this order.

(S.K.Keshote, J.)

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